IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1197 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALSAD JILLA SAHAKARI BANK LTD

Versus

C. N. PRAJAPATI

Appearance:

MR AK CLERK for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/01/2001

ORAL JUDGEMENT

1. The petitioner - bank challenges the award dated 24/7/1989 of the Industrial Tribunal, Surat declaring that the respondent should be treated to have been holding the post of a typist and that work of typist should be taken from him, and also declared that his

transfer on 28/5/1983 as a clerk to Vapi amounted to demotion which was not justified and was illegal. The Tribunal directed the treat respondent as a typist and to pay him typing allowance at the rate of Rs.15/- per month from 28/5/1983.

2. The respondent raised an industrial dispute when he was being posted as a clerk at Vapi and the dispute referred to the Tribunal was, whether the respondent who was demoted from typist post to the post of a clerk was entitled to be reinstated as a typist.

3. The Tribunal held that since the respondent had been doing work of a typist for over 15 years as stated by him, he should be treated to be holding the post of a typist and not a clerk. It noted that, in some documents (provident fund statement etc.), he was described as typist. The Tribunal therefore granted relief in favour of the respondent of the so called reinstatement as a typist.

4. From the material on record, it is clearly established that the respondent was appointed as a clerk. This is borne out from his letter of appointment dated 1/9/1965. It also transpires from his letter of confirmation dated 16/2/1966 that he came to be confirmed as a clerk. This fact has been admitted by the respondent in his deposition at exh.15, a copy of which is at Annexure `D' to the petition, wherein he states that he was appointed as a clerk. He admits that the allowance of Rs.10/- per month was being paid to him for doing the work of typist and thereafter, it was raised to Rs.15/- per month. This fact, by itself, means that he was holding the post of a clerk and when the work of a typist was taken from him, he was being paid a separate allowance for that work. This also shows that there was no substantive post of typist, which he could be holding as held by the Tribunal. In the Form at Annexure `E' to the petition, which was produced by the respondent in his deposition, it appears that he had described himself to be holding the post of typist clerk. This material part of evidence has been ignored by the Tribunal. In face of the positive evidence that the appointment of the respondent was as a clerk, and that he was being paid extra allowance for doing the work of a typist, which means he was not holding a substantive post of typist, it is clear that the finding reached by the Tribunal that the respondent was holding a post of typist is such as no reasonable person would reach on the basis of the material on record. The Tribunal has not considered the relevant material on record i.e. the form produced by

the respondent, a copy of which is at Annexure `E' to the petition. There was no question of any demotion of the respondent from the post of a typist as a clerk and the work of typist was being separately paid for. In fact, the respondent himself has stated that he had stopped doing the work of typist, and that during 1983 1984, that work was being done by one Mr. Bharucha. Obviously therefore, during that period, when he was not doing the work of typing, he was only a clerk, who was not doing such extra work. This important aspect has also been ignored by the Tribunal. Therefore, the findings reached by the Tribunal are perverse, and cannot be sustained.

5. In this view of the matter, the petition is allowed. The impugned award dated 24/7/1989 made by the Tribunal is hereby set aside. Rule is made absolute accordingly with no orders as to costs.

[R.K.ABICHANDANI, J.]

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